

FCC: For a More Serious Public Review

FAIR values the opportunity to comment on the rules currently under consideration in the FCC's 2002 Biennial Review. Unfortunately, the complicated and technical nature of the FCC's public comment procedure does not encourage-- and some would argue actually discourages-- significant participation from the public, the citizens whose interests the FCC is supposed to safeguard.

In addition, the specific questions under consideration by the FCC skew the inquiry in favor of deregulation from the start, presupposing that the media business is simply an industry like any other, best governed by a laissez-faire approach that maximizes profit. In a democracy, however, media occupy a unique and vital position, and policy should prioritize democracy, diversity and public engagement, not just financial concerns. There is a serious problem when the agency designated to regulate telecommunications in the public interest considers Americans first as consumers or "customers," rather than as citizens. The FCC's founding charter recognizes such concerns, but in the current political climate this mandate seems all but forgotten in Washington.

We would also like to note that, intentionally or not, the FCC also discourages public participation by seeming to mock those who dissent from the majority of the commissioners' pro-business agenda. For instance, when Chairman Michael Powell says that he has "no idea" what the public interest is, or makes jokes about the digital divide in our country, that sends a message: If your views clash with those in power at the FCC, your participation is not likely to be taken seriously. Powell was quoted (Baltimore Sun, 3/3/02) as saying at a June 2001 conference: "Contrary to the classic bugaboo that markets are just things that favor big business and big money, market policies have a winning record of delivering benefits to customers."

Bugaboo? There are a great many scholars, public interest advocates and activists who argue that history has repeatedly demonstrated that commercially driven companies, left to their own devices, are simply not designed to serve the public interest. It's certainly legitimate for the chair to disagree, but simply dismissing such arguments as a "bugaboo" is neither helpful nor persuasive. We are instructed to bring evidence to prove our points, while empty assumptions about markets and consumer benefits do not have to be supported by evidence; they are simply assumed to be true.

The Wrong Questions

The Commission poses a tremendous number of questions for public comment in this rule-making. The questions pertain to defining the public interest standard, chiefly through the traditional goals of diversity, competition and localism. The rules at stake are of immense importance, both to the public and to media companies: the national television multiple ownership rule, the local television multiple ownership rule, the radio-television cross-ownership rule and the dual network rule. This proceeding also considers reviews that were already underway: the local radio ownership rule and the newspaper/broadcast cross-ownership rule.

The Commission's Notice of Proposed Rule Making spends considerable time explaining how diversity might be measured, to the Commission and in the courts. Questions are posed in this manner: "Has consolidation in local markets led to less or greater diversity?" The material requested can be very specific: "We seek comment on whether the current local TV ownership rule affects the

viability of existing local newscasts and/or potential newscasts, particularly for small stations." Some questions pertain to whether or not cable talkshows like "Hardball" should be factored into discussions of viewpoint diversity, or whether the availability of different things on the internet should impact how we measure the diversity of available content.

It is difficult to conduct research that could answer such questions. More importantly, we question why the process is structured as such. As Andrew Calabrese observed in a submission to the FCC last year (MM Docket Nos. 01-235, 96-197), "the question of viewpoint diversity is inherently qualitative." Calabrese also makes excellent points about the burden of proof in these deliberations, pointing to the "dubious view that all policy decisions are or should be based on prior evidence of harm."

That would be seem to be the essence of the current debate: Should advocates for maintaining and/or strengthening ownership caps be responsible for offering evidence that removing the caps would be detrimental, or should those who seek to expand their control over the public airwaves be forced to make the case that giving them this expanded power will benefit the public?

It seems much more logical and prudent to focus on that latter issue. Have recent decisions relaxing media ownership limits produced tangible benefits for the American public? If not, why would the FCC hand over more control of the public resources to media companies that have not demonstrated a serious commitment to public service?

Deregulation Brings Consolidation, Commercialism & Homogenization

Recent trends in media ownership are unambiguous. The Consumer Federation of America reports that over the past 25 years:

- * The number of TV station owners has declined from 540 to 360.
- * The number of TV newsrooms has been reduced by 15 percent.
- * The number of newspaper owners has dropped from over 860 to fewer than 300.

The numbers on minority ownership are not encouraging either. According to recent numbers released by the National Telecommunications and Information Administration (NTIA), minorities owned just 3.8 percent of the TV and radio stations in the country. This has real impact on media content, as a study commissioned by the FCC in December 1999 illustrates ("Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming?") Research on this topic has shown that minority-owned media feature more minority voices on air, and more public affairs programming aimed at minority communities.

Radio has been uniquely affected by the move towards greater levels of media concentration. Individual station ownership has dropped 25 percent, and the industry has seen thousands of stations change hands over the last five years. The Future of Music Coalition released an important study in November 2002 that showed the harm to localism and diversity on the radio dial, largely due to the Telecommunications Act of 1996. The study showed that two companies-- Clear Channel and Viacom-- control 42 percent of radio listeners and 45 percent of revenues. Local markets are generally dominated by a small group of three or four broadcasters that control 70 percent or greater of the local market share.

The study also provides a valuable perspective on the issue of format variety. While media companies claim that formats have increased under this era of intense media concentration, the Future of Music Coalition's research showed that "formats with different names have similar playlists. Analyzing data from charts in Radio and Records and Billboard Airplay Monitor, revealed considerable format homogeneity -- playlist overlap between supposedly distinct formats: as much as 76 percent." The study also debunks a common market assumption about broadcasting: "Furthermore, radio companies regularly operate two or more stations with the same format in the same geographic market. Such format redundancy undermines a common economic assumption that station owners with multiple stations in a market would program differently, in order to avoid competing against themselves. We found 561 instances of format redundancy nationwide, amounting to massive missed opportunities for format variety, which might in turn enhance programming diversity."

It is not difficult to locate specific cases where media companies taking advantage of relaxed ownership guidelines have made decisions that run counter to any reasonable notion of the public interest. Consider these examples:

--Viacom recently decided to end news programming at its Detroit TV stations, allowing a competing station (WXYZ) produce a newscast for them. Viacom's WWJ will instead air re-runs of the CBS sitcom "Everybody Loves Raymond" (Detroit Free Press, 11/20/02).

--The Sinclair Broadcast Group has made its reputation in recent years by eliminating news divisions at the stations it purchases (WXLV in Winston-Salem, NC; WTCW in Tallahassee, FL; KDNL in St. Louis). The company has now moved to a centralized model, with a news division headquartered at what it calls its News Central (Broadcasting & Cable, 10/21/02).

--The WB network has developed a novel way of doing local programming at its smallest stations: It pretends. Using computer technology called SIB ("station in a box"), the WB network programs local channels through a centralized, national system. The only local flavor is the advertising, which is inserted into the programming to give the impression that the station is actually located in town. As the general manager of this group of stations explained it, "Excluding the cost of news, which we don't do, we've shaved 88 percent of the cost off operating a station in a local market" (Hollywood Reporter, 10/29/02).

--With duopolies and TV/newspaper cross-ownership schemes, news decision-making can often be centralized. The Tribune Co. has decided that the publisher of its South Florida Sun-Sentinel newspaper will also supervise WBZL, the local TV station it owns (South Florida Sun-Sentinel, 10/5/02). At Fox-owned TV stations WWOR and WNYW in New York City, one news director oversees both newscasts (New York Observer, 2/25/02).

--An "experiment" in Tampa, Florida is underway, where the Tampa Tribune newspaper, local TV station WFLA and locally oriented website TBO.com all operate under the same roof, cooperating on news gathering. As the Hartford Courant put it (5/4/00), "Competition among the three outlets is unacceptable."

--In Minnesota, local stations KMSP and WFTC (both owned by Fox) merged their newsrooms, bringing together journalists who had previously worked on competing newscasts.

--Job losses as a result of merged newsrooms or duopoly arrangements are all but guaranteed, given recent history (New York Newsday, 8/12/02; Los Angeles Times, 2/27/02).

-- As Brian Lowery reported in the Los Angeles Times (2/27/02), "some newspapers have gone so far to avoid the appearance of conflict as ceasing to review programs on sister stations or even their rivals, though it's hard to see how that serves readers."

--Public affairs programming can often suffer under corporate ownership, since a bottom-line mentality is more important than public service. WPWR in Chicago cut two public affairs programs, "Up 'N' Running" and "Concerning Chicago," soon after new owners Fox took control (Chicago Sun-Times, 10/3/02).

These factors should be considered in the FCC's decision, since such practices will become endemic in communities across the country if the rules are significantly relaxed. The Commission should also consider how well existing media outlets serve their communities. A 1998 study by the Benton Foundation and the Media Access Project found that local public affairs shows made up less than one half of one percent of the fare offered by commercial broadcasters. Thirty-five percent of the stations surveyed had no local news, and 25 percent had no local public affairs programming whatsoever ("What's Local About Local Broadcasting?").

More recent research by Philip Napoli of Fordham University poses the question of whether or not market conditions affect the level of public affairs programming ("Market Conditions and Public Affairs Programming: Implications for Digital Television Policy"). Napoli studied 24 markets and 112 stations, and found that local public affairs programming made up just 0.3 percent of broadcast time. He also discovered that the level of local competition in a market had little effect on how much public interest programming was offered: "The availability of local public affairs programming was not significantly related to any of a variety of market and station characteristics."

Conclusion

If it means to take its mandate to safeguard the public interest seriously, the FCC must make remedying the lack of local and public affairs programming on the public airwaves a central part of its mission. As is, it seems that our telecommunications policy is being driven by media companies' desire for ever greater profits (in an industry that is already extremely profitable for media owners and investors). The FCC can either correct this trend by revising its policy priorities to require more public interest programming, or it could decide to continue to allow a diminishing number of companies to give very little back to the public in return for the use of our airwaves.

The current review poses many questions, but we feel that it fails to ask the right ones. Any proposal to alter public policy this significantly should ask more straight-forward questions, such as:

--What are the effects of the most recent trends in media consolidation? How do they affect media workers and the public?

--What tangible benefits will the public get from another round of intense media concentration?

--Most importantly, does the public want ever-larger media companies controlling an even greater share of the public airwaves?

Until the FCC begins to explore these questions, we urge you to delay making any decisions on these matters.